

complex research and development acquisitions, but may be used in other appropriate acquisitions, including production.

(c) The companies involved normally form a contractor team arrangement before submitting an offer. However, they may enter into an arrangement later in the acquisition process, including after contract award.

9.603 Policy.

The Government will recognize the integrity and validity of contractor team arrangements; *provided*, the arrangements are identified and company relationships are fully disclosed in an offer or, for arrangements entered into after submission of an offer, before the arrangement becomes effective. The Government will not normally require or encourage the dissolution of contractor team arrangements.

9.604 Limitations.

Nothing in this subpart authorizes contractor team arrangements in violation of antitrust statutes or limits the Government's rights to—

- (a) Require consent to subcontracts (see subpart 44.2);
- (b) Determine, on the basis of the stated contractor team arrangement, the responsibility of the prime contractor (see subpart 9.1);
- (c) Provide to the prime contractor data rights owned or controlled by the Government;
- (d) Pursue its policies on competitive contracting, subcontracting, and component breakout after initial production or at any other time; and
- (e) Hold the prime contractor fully responsible for contract performance, regardless of any team arrangement between the prime contractor and its subcontractors.

Subpart 9.7—Defense Production Pools and Research and Development Pools

9.701 Definition.

Pool, as used in this subpart, means a group of concerns (see 19.001) that have—

- (a) Associated together in order to obtain and perform, jointly or in con-

junction with each other, defense production or research and development contracts;

(b) Entered into an agreement governing their organization, relationship, and procedures; and

(c) Obtained approval of the agreement by either—

(1) The Small Business Administration (SBA) under section 9 or 11 of the Small Business Act (15 U.S.C. 638 or 640) (see 13 CFR part 125); or

(2) A designated official under Part V of Executive Order 10480, August 14, 1953 (18 FR 4939, August 20, 1953) and section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158).

[48 FR 42142, Sept. 19, 1983, as amended at 51 FR 2649, Jan. 17, 1986]

9.702 Contracting with pools.

(a) Except as specified in this subpart, a pool shall be treated the same as any other prospective or actual contractor.

(b) The contracting officer shall not award a contract to a pool unless the offer leading to the contract is submitted by the pool in its own name or by an individual pool member expressly stating that the offer is on behalf of the pool.

(c) Upon receipt of an offer submitted by a group representing that it is a pool, the contracting officer shall verify its approved status with the SBA District Office Director or other approving agency and document the contract file that the verification was made.

(d) Contracts with pools are exempt from the *manufacturer or regular dealer* requirement of the Walsh-Healey Public Contracts Act (41 U.S.C. 35) (see subparts 9.1 and 22.6 and 41 CFR 50-201.604(d)).

(e) Pools approved by the SBA under the Small Business Act are entitled to the preferences and privileges accorded to small business concerns. Approval under the Defense Production Act does not confer these preferences and privileges.

(f) Before awarding a contract to an unincorporated pool, the contracting officer shall require each pool member participating in the contract to furnish a certified copy of a power of attorney identifying the agent authorized to

sign the offer or contract on that member's behalf. The contracting officer shall attach a copy of each power of attorney to each signed copy of the contract retained by the Government.

9.703 Contracting with individual pool members.

(a) Pool members may submit individual offers, independent of the pool. However, the contracting officer shall not consider an independent offer by a pool member if that pool member participates in a competing offer submitted by the pool.

(b) If a pool member submits an individual offer, independent of the pool, the contracting officer shall consider the pool agreement, along with other factors, in determining whether that pool member is a responsible prospective contractor under subpart 9.1.

PART 10—MARKET RESEARCH

Sec.

10.000 Scope of part.

10.001 Policy.

10.002 Procedures.

AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 60 FR 48237, Sept. 18, 1995, unless otherwise noted.

10.000 Scope of part.

This part prescribes policies and procedures for conducting market research to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services. This part implements requirements of 41 U.S.C. 253a(a)(1), 41 U.S.C. 264b, and 10 U.S.C. 2377.

10.001 Policy.

(a) Agencies shall—

(1) Ensure that legitimate needs are identified and trade-offs evaluated to acquire items which meet those needs;

(2) Conduct market research appropriate to the circumstances—

(i) Before developing new requirements documents for an acquisition by that agency;

(ii) Before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold; and

(iii) Before soliciting offers for acquisitions with an estimated value less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost; and

(3) Use the results of market research to—

(i) Determine if sources capable of satisfying the agency's requirements exist;

(ii) Determine if commercial items or, to the extent commercial items suitable to meet the agency's needs are not available, nondevelopmental items are available that—

(A) Meet the agency's requirements;

(B) Could be modified to meet the agency's requirements; or

(C) Could meet the agency's requirements if those requirements were modified to a reasonable extent;

(iii) Determine the extent to which commercial items or nondevelopmental items could be incorporated at the component level;

(iv) Determine the practices of firms engaged in producing, distributing, and supporting commercial items, such as terms for warranties, buyer financing, maintenance and packaging, and marking; and

(v) Ensure maximum practicable use of recovered materials (see subpart 23.4) and promote energy conservation and efficiency.

(b) When conducting market research, agencies should not request potential sources to submit more than the minimum information necessary.

10.002 Procedures.

(a) Acquisitions begin with a description of the Government's needs stated in terms sufficient to allow conduct of market research.

(b) Market research is then conducted to determine if commercial items or nondevelopmental items are available to meet the Government's needs or could be modified to meet the Government's needs.

(1) The extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. Market research involves obtaining information specific to the item being acquired and should include—